IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.24695 of 2008
RANGILA NONIA & JITENDRA NONIA
Versus
STATE OF BIHAR
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3. 16.9.2008 Heard.

The learned Judge has referred to paragraphs 102, 103 and 112 and 114 of the case diary and has recorded in paragraph 6 of the rejection order that the witnesses examined in those paragraphs have disclosed the names of the two petitioners.

The learned Additional Public Prosecutor has read over to me the contents of the above noted paragraphs. Paragraph 114 is not the statement of any witness. It records the opinion of the I.O. on some material said to have come to him through some informer.

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As regards the three paragraphs like 102, 103 and 112 the witnesses do not name on account of identifying the two petitioners as amongst the culprits. The rejection of bail in a case in which the two petitioners are not named in the FIR and in which they are in custody since 1.3.2008 and 10.3.2008 respectively without being put on test identification parade or anything being recovered from either of them, is a simple example of applying the discretionary powers of a court wrongly. If the

Judges manning the lower courts are living under an impression that such baseless and illegal orders could be securing the safety for them then I could advise them to be careful as wrong application of discretion for refusing a legitimate prayer may be treated as an example of incompetence as also passing orders on matters which are extraneous to the judicial discretion of a court.

Regard being had to the fact that the petitioners were not put on test identification parade and nothing has been recovered from either of them and that they are in custody since dates as indicated above, let the above named two petitioners be released from custody on furnishing P.R. bond of Rs.500/-(five hundred) without any surety to the satisfaction of **Chief Judicial Magistrate, Rohtas in Kochas P.S.Case no.11 of 2007.**

Let a copy of the present order be communicated to the learned Judge for information.

(Dharnidhar Jha, J.)

B.Kr.

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